IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 27095 of 2005(A)

PETITIONER:

JOSEKUTTY ANTONY, URUMPIL,
VECHOOCHIRA, PATHANAMTHITTA DISTRICT,
PIN-686 511.

BY ADV. SRI.V.C.JAMES

RESPONDENTS:

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1. THE STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION, IDUKKI, THODUPUZHA.

4. THE D.E.O. KATTAPPANA.

5. THE CORPORATE MANAGER, CORPORATE EDUCATIONAL AGENCY, KANJIRAPPALLY.

R5 BY ADV. SMT.MINI ELIZABETH GEORGE
R1 TO R4 BY GOVERNMENT PLEADER SMT. R. BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE APPOINTMENT ORDER DATED 23.10.2000

EXT.P2 TRUE COPY OF THE ORDER DATED 20.11.2000 ISSUED BY THE 4TH RESPONDENT.

EXT.P3 TRUE COPY OF THE PETITION BEFORE THE DEPUTY DIRECTOR OF EDUCATION DATED 28.12.2000 FILED BY THE 5TH RESPONDENT.

EXT.P4 TRUE COPY OF THE ORDER NO.B5/89/2001/K.DIS. DATED 7.5.2001

EXT.P5 TRUE COPY OF THE PETITION SUBMITTED BEFORE THE DPI DATED 1.6.2001

EXT.P6 TRUE COPY OF THE COMMUNICATION DATED 28.1.2002 OF THE DEO ADDRESSED TO DPI

EXT.P7 TRUE COPY OF THE ORDER NO. EM1/42/948/01/DPI DATED 18.3.2002 ISSUED BY THE ADDL. DIRECTOR (GENERAL)

EXT.P8 TRUE COPY OF THE ORDER G.O.RT. NO. 2746/03/G.EDN. DATED 14.7.2003

EXT.P9 TRUE COPY OF THE G.O. RT. NO. 1819/2000 G.EDN. DATED 9.5.2000

EXT.P10 TRUE COPY OF THE REPRESENTATION DATED 20.10.2003

EXT.P11 TRUE COPY OF THE COMMUNICATION DATED 8.2.2005 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER DATED 8.2.2005

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 27095 OF 2005

Dated this the 1st day of March, 2007

JUDGMENT

Petitioner is challenging Ext.P8 order of Government confirming the orders of the District Educational Officer and Director of Public Instruction refusing to regularise petitioner's appointment made by the 5th respondent as Physical Education Teacher from 23.10.2000 to 31.3.2001. It is seen from Ext.P8 that appointment was illegal because by virtue of Government order, G.O.MS. No. 123/91/G.Edn. dated 5.8.1991 there was prohibition against appointment of Specialist Teachers when there are protected teachers in the same District. The finding of the authorities below is that as on the date of the appointment of the petitioner, there was a protected teacher in the District by name V.M. Francis and the petitioner was not entitled to get appointment under Government orders. There is also a finding in Ext.P8 that appointment by the management is against Government orders. Therefore respondents 1, 2 and 4 rightly declined to approve the appointment of the petitioner. W.P. is devoid of any merit and is

dismissed. Since petitioner has worked for the period from 23.10.2000 to 31.3.2001, in fairness I feel the management should pay him wages more so when it made appointment contrary to Rules.

(C.N.RAMACHANDRAN NAIR)
Judge